

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ASHLEY B.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, D.B., AND D.-B.,
Appellees.

No. 2 CA-JV 2019-0091
Filed November 18, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20150654
The Honorable Lori B. Jones, Judge Pro Tempore

AFFIRMED

COUNSEL

Law Office of Ransom Young P.L.L.C., Tucson
By Ransom Young
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Minors

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 Ashley B. appeals from the juvenile court's order terminating her parental rights to her children, D.B. (D.M.L.B.) (born June 2015) and D.-B. (D.E.B.) (born May 2017), on the grounds of neglect under A.R.S. § 8-533(B)(2) and time in care under § 8-533(B)(8)(c). She asserts insufficient evidence supports the grounds for termination. We affirm.

¶2 To sever a parent's rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that terminating the parent's rights is in the children's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 22, 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). We will affirm the order if the findings upon which it is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view that evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶3 D.M.L.B. was removed from his parents' care in September 2015 after his day care reported he had a burn on his arm and a Department of Child Safety (DCS) investigator noted he also had bruising on his ribcage. Ashley had no explanation how the burn had occurred, and D.M.L.B.'s father, Charreck L., claimed a piece of fried chicken had fallen on him – an explanation inconsistent with the size of the burn, which resembled the top of a lighter. DCS filed a dependency petition, and the juvenile court found D.M.L.B. dependent as to both parents.

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¶4 Ashley largely complied with her case plan but continued her relationship with Charreck despite his lack of participation in his case plan. DCS began to transition D.M.L.B. back into her care in September 2016. The placement included the requirement that he have restricted contact with Charreck—a requirement Ashley violated the first weekend of unsupervised visitation despite denying having an ongoing relationship with Charreck. D.M.L.B. was returned to her care in February 2017. D.E.B. was born in May 2017 and remained in Ashley's custody; although Ashley claimed Charreck was not his father, Charreck later established paternity.

¶5 In September 2017, D.M.L.B. was seen with Charreck with injuries on his face. When DCS (and law enforcement officers) arrived at Ashley's home, Ashley denied that Charreck was there, but he was found in a back bedroom. D.M.L.B. told a doctor he had been burned by Charreck's cigarette. Charreck claimed, however, that he had no contact with the children. DCS moved to change D.M.L.B.'s placement to a foster home and filed a dependency petition as to D.E.B.; D.E.B. was found dependent as to both parents in October 2017. Ashley continued to maintain a relationship with Charreck, insisting he was not a danger to her children.

¶6 The juvenile court changed the case plan to severance and adoption in July 2018, and DCS filed a petition to terminate the parents' rights on neglect and time-in-care grounds. After a contested severance hearing, the court granted the motion, terminating both parents' rights to D.M.L.B. and D.E.B. This appeal followed.¹

¶7 Ashley argues that insufficient evidence supports the juvenile court's finding that termination was warranted under § 8-533(B)(8)(c). To terminate Ashley's rights on this ground, DCS was required to show the children had been in court-ordered out-of-home care "for a cumulative total period of fifteen months or longer" and Ashley had "been unable to remedy the circumstances" causing the children to be in an out-of-home placement, and "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future."

¶8 Ashley contends there was not enough evidence to support the last two elements because she had completed all provided services and there was "no medical evidence of any child being harmed by the father." Ashley has cited no authority suggesting medical evidence is required to

¹Charreck is not a party to this appeal.

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show injury, nor that merely completing services forecloses termination under § 8-533(B)(8)(c). *See Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 11 (App. 2013) (claims unsupported by “proper and meaningful argument” warrant summary rejection).

¶9 And, to the extent her argument asks us to reweigh the evidence, we will not do so. *See Oscar O.*, 209 Ariz. 332, ¶ 14. D.M.L.B. had been harmed while in Charreck’s care, and Ashley persistently violated the plan requirements intended to prevent such harm. Additionally, despite the injuries to D.M.L.B., she insisted the children were at no risk of harm by Charreck. And, notwithstanding Ashley’s compliance with the case plan, there was evidence she had not substantially benefitted from provided services. Because the juvenile court did not err in terminating Ashley’s parental rights on time-in-care grounds, we need not address her arguments related to termination on neglect grounds. *See Jesus M.*, 203 Ariz. 278, ¶ 3 (appellate court need not consider challenge to alternate grounds for severance if evidence supports any one ground).

¶10 We affirm the juvenile court’s order terminating Ashley’s parental rights to D.M.L.B. and D.E.B.